IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No 268 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE D.P.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

NARANBHAI MOHANBHAI PATEL

Versus

ARCHANABEN W/O NARANBHAI MOHANBHAI PATEL & D/O

Appearance:

MR BC DAVE for Petitioner

MR PK JANI for Respondent No. 1

NOTICE SERVED for Respondent No. 2

MR S.P. DAVE, A.P.P for Respondent No. 3

CORAM : MR.JUSTICE D.P.BUCH

Date of decision: 10/04/2001

ORAL JUDGEMENT

1. This is a Criminal Revision Application under Section 397 read with 401 of Code of Criminal Procedure

against an ad-interim-order dated 07.07.1999 recorded by the learned Judicial Magistrate First Class, Visnagar in Criminal Miscellaneous Application No. 110/1999. The learned Magistrate passed an order for payment of interim maintenance at Rs.500/- for each of the two applicants of the said application before him, who are respondents nos. 1 and 2 before this Court.

2. The respondents nos. 1 and 2 preferred the said application before the said Court under Section 125 of the Code of Criminal Procedure, 1973 (for short 'Code') and in the said application they submitted an application for interim maintainance. The Trial Court passed the aforesaid ad-interim-order.

3. Feeling aggrieved by that order, the petitioner has preferred this petition before this Court. The petitioner is the husband of respondent no. 1 and father of minor respondent no. 2. It has been contended here that the order has been passed by the learned Magistrate without application of mind. That the petitioner is earning Rs. 1,500/- per month and he has other responsibilities and therefore, it is not possible for him to pay Rs. 1000/- to the respondents every month. He says, therefore, the order of the learned Magistrate is illegal and deserves to be set-aside. It is therefore prayed that the said order be set-aside by allowing this Revision.

4. I have heard the learned Advocates for the parties and have also perused the papers. Mr. S.P. Dave, learned Additional Public Prosecutor appears for the State. The learned Advocate for the petitioner has argued at length that the order has been passed without application of mind. Now, the order shows that the learned Magistrate has recorded a prima-facie finding about the ill treatment by and income of the present petitioner. Therefore, it cannot be said that the order is without application of mind. It is next contended that the contention of the respondent in the application under Section 125 of the Code have not been supported by any material before the Trial Court. The order of the learned Magistrate shows that the respondent had filed an affidavit before him. Therefore, affidavit provided some material to the said Court for arriving at a prima-facie decision and finding as to the contentions raised in the application. After all this is an application for interim maintenance and the order passed is an ad-interim-order. The petitioners herein can appear before the said Court. He can also submit his objections and request the Court to pass appropriate interim order

after hearing the parties.

5. At present, there is no reason to interfere with the order of the Trial Court, since, it has been passed after considering the affidavit of the respondents. The next contention is that the petitioner is prepared to pay Rs. 1 lakh towards full and final settlement. Now this order cannot be substituted for payment of the said amount, in place of the order passed by the learned Magistrate. This Court can interfere with the said order only if it is found that the order is illegal and perverse. There is no material to show that the order passed by the learned Magistrate is illegal and perverse. In aforesaid view of the matter, I do not find any merit in the present application and therefore the Revision Application deserves to be dismissed. Naturally, it would be open to the petitioner to submit objections and file reply before the Trial Court and naturally after hearing the parties the Trial Court will pass appropriate orders. With the aforesaid observation this Criminal Revision Application is dismissed. Notice discharged.

(D.P. BUCH,J.)

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